

COMMITTEE REPORT

Mr. Speaker: Pursuant to Joint Rule 20, your Committee on Rules and Legislative Procedures, to which was referred Engrossed Senate Bill 169 because it conflicts with SEA 242-2003 without properly recognizing the existence of SEA 242-2003, has had Engrossed Senate Bill 169 under consideration and begs leave to report back to the House with the recommendation that Engrossed Senate Bill 169 be corrected as follows:

- 1 In the conference committee report to ESB 169, page 4, line
- 2 28, delete "P.L.1-2002," and insert "SEA 242-2003, SECTION
- 3 1,".
- 4 In the conference committee report to ESB 169, page 4, line
- 5 29, delete "SECTION 17,".
- 6 In the conference committee report to ESB 169, page 4, line
- 7 30, delete "UPON PASSAGE]" and insert ""JULY 1, 2003]".
- 8 In the conference committee report to ESB169, page 4, line
- 9 30, delete "Sec. 4. (a) The following public records are".
- 10 In the conference committee report to ESB169, page 4,
- 11 delete lines 31 through 51.
- 12 In the conference committee report to ESB169, delete pages 5
- 13 through 7.
- 14 In the conference committee report to ESB169, page 8,
- 15 delete lines 1 through 4, and insert "Sec. 4. (a) The following
- 16 public records are excepted from section 3 of this chapter and may not
- 17 be disclosed by a public agency, unless access to the records is
- 18 specifically required by a state or federal statute or is ordered by a court
- 19 under the rules of discovery:
- 20 (1) Those declared confidential by state statute.
- 21 (2) Those declared confidential by rule adopted by a public
- 22 agency under specific authority to classify public records as
- 23 confidential granted to the public agency by statute.
- 24 (3) Those required to be kept confidential by federal law.

1 (4) Records containing trade secrets.

2 (5) Confidential financial information obtained, upon request,
3 from a person. However, this does not include information that is
4 filed with or received by a public agency pursuant to state statute.

5 (6) Information concerning research, including actual research
6 documents, conducted under the auspices of an institution of
7 higher education, including information:

8 (A) concerning any negotiations made with respect to the
9 research; and

10 (B) received from another party involved in the research.

11 (7) Grade transcripts and license examination scores obtained as
12 part of a licensure process.

13 (8) Those declared confidential by or under rules adopted by the
14 supreme court of Indiana.

15 (9) Patient medical records and charts created by a provider,
16 unless the patient gives written consent under IC 16-39.

17 (10) Application information declared confidential by the
18 twenty-first century research and technology fund board under
19 IC 4-4-5.1.

20 (11) A photograph, a video recording, or an audio recording of an
21 autopsy, except as provided in IC 36-2-14-10.

22 (b) Except as otherwise provided by subsection (a), the following
23 public records shall be excepted from section 3 of this chapter at the
24 discretion of a public agency:

25 (1) Investigatory records of law enforcement agencies. However,
26 certain law enforcement records must be made available for
27 inspection and copying as provided in section 5 of this chapter.

28 (2) The work product of an attorney representing, pursuant to
29 state employment or an appointment by a public agency:

30 (A) a public agency;

31 (B) the state; or

32 (C) an individual.

33 (3) Test questions, scoring keys, and other examination data used
34 in administering a licensing examination, examination for
35 employment, or academic examination before the examination is
36 given or if it is to be given again.

37 (4) Scores of tests if the person is identified by name and has not
38 consented to the release of the person's scores.

39 (5) The following:

40 (A) Records relating to negotiations between the department

of commerce, the Indiana development finance authority, the film commission, the Indiana business modernization and technology corporation, or economic development commissions with industrial, research, or commercial prospects, if the records are created while negotiations are in progress.

(B) Notwithstanding clause (A), the terms of the final offer of public financial resources communicated by the department of commerce, the Indiana development finance authority, the Indiana film commission, the Indiana business modernization and technology corporation, or economic development commissions to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

(C) When disclosing a final offer under clause (B), the department of commerce shall certify that the information being disclosed accurately and completely represents the terms of the final offer.

(6) Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

(7) Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.

(8) Personnel files of public employees and files of applicants for public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) ~~information concerning~~ **the factual basis for a disciplinary action** in which final action has been taken and that resulted in the employee being ~~disciplined~~ **suspended, demoted,** or discharged.

However, all personnel file information shall be made available

1 to the affected employee or the employee's representative. This
 2 subdivision does not apply to disclosure of personnel information
 3 generally on all employees or for groups of employees without the
 4 request being particularized by employee name.

5 (9) Minutes or records of hospital medical staff meetings.

6 (10) Administrative or technical information that would
 7 jeopardize a recordkeeping or security system.

8 (11) Computer programs, computer codes, computer filing
 9 systems, and other software that are owned by the public agency
 10 or entrusted to it and portions of electronic maps entrusted to a
 11 public agency by a utility.

12 (12) Records specifically prepared for discussion or developed
 13 during discussion in an executive session under IC 5-14-1.5-6.1.
 14 However, this subdivision does not apply to that information
 15 required to be available for inspection and copying under
 16 subdivision (8).

17 (13) The work product of the legislative services agency under
 18 personnel rules approved by the legislative council.

19 (14) The work product of individual members and the partisan
 20 staffs of the general assembly.

21 (15) The identity of a donor of a gift made to a public agency if:

22 (A) the donor requires nondisclosure of the donor's identity as
 23 a condition of making the gift; or

24 (B) after the gift is made, the donor or a member of the donor's
 25 family requests nondisclosure.

26 (16) Library or archival records:

27 (A) which can be used to identify any library patron; or

28 (B) deposited with or acquired by a library upon a condition
 29 that the records be disclosed only:

30 (i) to qualified researchers;

31 (ii) after the passing of a period of years that is specified in
 32 the documents under which the deposit or acquisition is
 33 made; or

34 (iii) after the death of persons specified at the time of the
 35 acquisition or deposit.

36 However, nothing in this subdivision shall limit or affect contracts
 37 entered into by the Indiana state library pursuant to IC 4-1-6-8.

38 (17) The identity of any person who contacts the bureau of motor
 39 vehicles concerning the ability of a driver to operate a motor
 40 vehicle safely and the medical records and evaluations made by

1 the bureau of motor vehicles staff or members of the driver
2 licensing medical advisory board. However, upon written request
3 to the commissioner of the bureau of motor vehicles, the driver
4 must be given copies of the driver's medical records and
5 evaluations that concern the driver.

6 (18) School safety and security measures, plans, and systems,
7 including emergency preparedness plans developed under 511
8 IAC 6.1-2-2.5.

9 (19) A record or a part of a record, the public disclosure of which
10 would have a reasonable likelihood of threatening public safety
11 by exposing a vulnerability to terrorist attack. A record described
12 under this subdivision includes:

13 (A) a record assembled, prepared, or maintained to prevent,
14 mitigate, or respond to an act of terrorism under IC 35-47-12-1
15 or an act of agricultural terrorism under IC 35-47-12-2;

16 (B) vulnerability assessments;

17 (C) risk planning documents;

18 (D) needs assessments;

19 (E) threat assessments;

20 (F) domestic preparedness strategies;

21 (G) the location of community drinking water wells and
22 surface water intakes;

23 (H) the emergency contact information of emergency
24 responders and volunteers;

25 (I) infrastructure records that disclose the configuration of
26 critical systems such as communication, electrical, ventilation,
27 water, and wastewater systems; and

28 (J) detailed drawings or specifications of structural elements,
29 floor plans, and operating, utility, or security systems, whether
30 in paper or electronic form, of any building or facility located
31 on an airport (as defined in IC 8-21-1-1) that is owned,
32 occupied, leased, or maintained by a public agency. A record
33 described in this clause may not be released for public
34 inspection without the prior approval of the public agency. The
35 submitting public agency:

36 (i) is responsible for determining whether the public
37 disclosure of a record or a part of a record has a reasonable
38 likelihood of threatening public safety by exposing a
39 vulnerability to terrorist attack; and

40 (ii) must identify a record described under item (i) and

1 clearly mark the record as "confidential and not subject to
 2 public disclosure under IC 5-14-3-4(19)(I) without approval
 3 of (insert name of submitting public agency)".

4 This subdivision does not apply to a record or portion of a record
 5 pertaining to a location or structure owned or protected by a
 6 public agency in the event that an act of terrorism under
 7 IC 35-47-12-1 or an act of agricultural terrorism under
 8 IC 35-47-12-2 has occurred at that location or structure, unless
 9 release of the record or portion of the record would have a
 10 reasonable likelihood of threatening public safety by exposing a
 11 vulnerability of other locations or structures to terrorist attack.

12 (20) The following personal information concerning a customer
 13 of a municipally owned utility (as defined in IC 8-1-2-1):

14 (A) Telephone number.

15 (B) Address.

16 (C) Social Security number.

17 (c) Nothing contained in subsection (b) shall limit or affect the right
 18 of a person to inspect and copy a public record required or directed to
 19 be made by any statute or by any rule of a public agency.

20 (d) Notwithstanding any other law, a public record that is classified
 21 as confidential, other than a record concerning an adoption, shall be
 22 made available for inspection and copying seventy-five (75) years after
 23 the creation of that record.

24 (e) Notwithstanding subsection (d) and section 7 of this chapter:

25 (1) public records subject to IC 5-15 may be destroyed only in
 26 accordance with record retention schedules under IC 5-15; or

27 (2) public records not subject to IC 5-15 may be destroyed in the
 28 ordinary course of business.

29 **SECTION 4. [EFFECTIVE UPON PASSAGE] (a)**
 30 **Notwithstanding IC 5-14-3-4(b)(8), subsection (b) applies instead**
 31 **of IC 5-14-3-4(b)(8).**

32 **(b) Except as otherwise provided by IC 5-14-3-4(a), the**
 33 **following public records shall be excepted from IC 5-14-3-3 at the**
 34 **discretion of a public agency:**

35 **(1) Personnel files of public employees and files of applicants**
 36 **for public employment, except for:**

37 **(A) the name, compensation, job title, business address,**
 38 **business telephone number, job description, education and**
 39 **training background, previous work experience, or dates**
 40 **of first and last employment of present or former officers**
 41 **or employees of the agency;**

- 1 **(B) information relating to the status of any formal charges**
2 **against the employee; and**
3 **(C) the factual basis for a disciplinary action in which final**
4 **action has been taken and that resulted in the employee**
5 **being suspended, demoted, or discharged.**
6 **However, all personnel file information shall be made**
7 **available to the affected employee or the employee's**
8 **representative. This subdivision does not apply to disclosure**
9 **of personnel information generally on all employees or for**
10 **groups of employees without the request being particularized**
11 **by employee name.**
12 **(c) This SECTION expires July 1, 2003."**
13 Renumber all SECTIONS consecutively.
 (Reference is to ESB 169 as reprinted April 3, 2003, and to the
Conference Committee Report to ESB 169.)

Representative Pelath, Chairperson

Representative Whetstone, R.M.M.

Representative Goodin, Sponsor